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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 6553 of 2005

Date of decision: 17.8.2007

Arjun Dev **...Petitioner**

Versus

Ramphal and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. R.A. Sheoran, Advocate for the petitioner.

Mr. Amit Kateria, Advocate for the respondents.

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RAJESH BINDAL, J.

By filing the present petition under Article 227 of the Constitution of India, petitioner has challenged the order dated September 10, 2005 passed by the Additional Civil Judge (Senior Division), Charkhi Dadri dismissing the application filed by the petitioner for leading secondary evidence.

While considering the prayer made by the petitioner, learned trial Court passed the following orders:-

> "After having heard learned counsel on behalf of both the sides and having perused the records very carefully, I am of the considered opinion that applicant has not able to show prima facie, loss of the document. The application is not even supported with an affidavit. During the arguments, it had been mentioned that the original agreement to sell was with Raghbir Singh son of Dharam Singh and that at time of filing of the plaint the photocopy was only placed on record. However, a perusal of the plaint discloses that no such averment has been raised that the original was earlier in custody of Raghbir and that it was handed over to the applicant nor there is any

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averment in the plaint that the copy of the said agreement has been annexed with the plaint and that original shall be produced at the time of evidence or otherwise. Without proving the existence of the document itself at any point of time, secondary evidence cannot be allowed to be adduced. At this stage, there is nothing on record to suggest that the document was in existence and that it was lost and could not be produced despite best efforts of the applicant. In these circumstances , finding no merit in the application, the same is hereby dismissed."

Even before this Court at the time of arguments, learned counsel for the petitioner has not been able to satisfy the Court as to how the claim made by the petitioner fulfills the requirements of Section 65 of the Indian Evidence Act, as is noticed by the learned trial Court. Even the assertion made by the petitioner in his application to the effect that he had already alleged that plaintiff had executed an agreement to sell dated 9.1.98 in favour of the Raghubir Singh in his plaint was also found to be incorrect. When the existence of the document in original itself is in dispute, the question of secondary evidence does not arise.

Accordingly, while concurring with the reasons given by the learned trial Court, I do not find any merit in the present petition and the same is dismissed.

August 17, 2007 **(Rajesh Bindal)**
Pka **Judge**